

1 HANSON BRIDGETT LLP  
KURT A. FRANKLIN, SBN 172715  
2 kfranklin@hansonbridgett.com  
LISA M. POOLEY, SBN 168737  
3 lpooley@hansonbridgett.com  
SAMANTHA WOLFF, SBN 240280  
4 swolff@hansonbridgett.com  
RUSSELL C. PETERSEN, SBN 264245  
5 russ.petersen@hansonbridgett.com  
CANDICE P. SHIH, SBN 294251  
6 cshih@hansonbridgett.com  
425 Market Street, 26th Floor  
7 San Francisco, California 94105  
Telephone: (415) 777-3200  
8 Facsimile: (415) 541-9366

9 HANSON BRIDGETT LLP  
TYSON M. SHOWER, SBN 190375  
10 tshower@hansonbridgett.com  
LANDON D. BAILEY, SBN 240236  
11 lbailey@hansonbridgett.com  
500 Capitol Mall, Suite 1500  
12 Sacramento, California 95814  
Telephone: (916) 442-3333  
13 Facsimile: (916) 442-2348

14 OTTEN LAW, PC  
VICTOR OTTEN, SBN 165800  
15 vic@ottenlawpc.com  
KAVITA TEKCHANDANI, SBN 234873  
16 kavita@ottenlawpc.com  
3620 Pacific Coast Highway, #100  
17 Torrance, California 90505  
Telephone: (310) 378-8533  
18 Facsimile: (310) 347-4225

19 Attorneys for Plaintiffs  
CORY SPENCER, DIANA MILENA  
20 REED, and COASTAL PROTECTION  
RANGERS, INC.  
21

22 **UNITED STATES DISTRICT COURT**  
23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
24

25 CORY SPENCER, an individual;  
26 DIANA MILENA REED, an  
individual; and COASTAL  
27 PROTECTION RANGERS, INC., a  
28 California non-profit public benefit

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' REPLY TO  
DEFENDANTS CHARLIE AND  
FRANK FERRARA'S OPPOSITION  
TO PLAINTIFFS' MOTION FOR  
SANCTIONS**

1 corporation,

2 Plaintiffs,

3 v.

4 LUNADA BAY BOYS; THE  
5 INDIVIDUAL MEMBERS OF THE  
6 LUNADA BAY BOYS, including but  
7 not limited to SANG LEE, BRANT  
8 BLAKEMAN, ALAN JOHNSTON  
9 AKA JALIAN JOHNSTON,  
10 MICHAEL RAE PAPAYANS,  
11 ANGELO FERRARA, FRANK  
12 FERRARA, CHARLIE FERRARA,  
13 and N. F.; CITY OF PALOS VERDES  
ESTATES; CHIEF OF POLICE JEFF  
KEPLEY, in his representative  
capacity; and DOES 1-10,

14 Defendants.

Judge: Hon. Rozella Oliver  
Date: October 12, 2017  
Time: 10:00 a.m.  
Crtrm.: F

Complaint Filed: March 29, 2016  
Trial Date: December 12, 2017

1 **I. INTRODUCTION**

2 Defendants Charlie and Frank Ferrara attempt to distance themselves from  
3 their co-Defendants' "vulgar" text exchanges while downplaying their destruction of  
4 evidence. But they do not dispute that – *after* this lawsuit was filed – they deleted  
5 and destroyed their communications with co-Defendants. They also concede that  
6 these communications are no longer recoverable. This constitutes sanctionable  
7 conduct.

8 The Ferrara Defendants' destruction of evidence is extensive, as is their  
9 history of noncompliance. Charlie Ferrara obtained a new cell phone two weeks  
10 before his first appearance in this matter (five months after the suit was filed) and  
11 discarded all data on his old phone, despite asserting under oath at his deposition  
12 that all data (including texts) had been transferred to his new phone. The old phone  
13 contained information from the two-month period when Plaintiffs were assaulted  
14 and harassed. Conveniently, Charlie Ferrara's cell phone bills contain no  
15 information of texts sent or received during this timeframe. Frank Ferrara is also  
16 missing text messages with co-Defendants that occurred during a period when he  
17 was obligated to preserve evidence. This destruction is not coincidental.

18 The Ferrara Defendants' discovery abuses to date are egregious, resulting in  
19 significant prejudice to Plaintiffs. Plaintiffs request that these abuses be remedied  
20 through imposition of severe sanctions, including default judgment or, alternatively,  
21 denial of summary judgment and an adverse inference jury instruction.

22 **II. ARGUMENT**

23 **A. The Ferraras' Preservation Obligation Arose In Early April 2016.**

24 Although Frank and Charlie Ferrara argue that their preservation obligation  
25 did not start until the day of the Initial Scheduling Conference on August 29, 2016,  
26 noticeably absent is any declaration from either Defendant attesting to when they  
27  
28

1 first became aware of this lawsuit.<sup>1</sup> With last-minute speed, the Ferrara Defendants  
 2 suggest they became aware of the lawsuit, retained counsel, and entered their first  
 3 appearance in this matter – *in time for the same-day 8:30 a.m. scheduling*  
 4 *conference before Judge Otero on August 29*. More importantly, these unsupported  
 5 allegations contradict the actual evidence that the Ferrara Defendants were aware of  
 6 this lawsuit almost immediately. Frank Ferrara admitted under oath to being  
 7 interviewed by a journalist regarding the allegations of this lawsuit *before* April 7,  
 8 2017. (Wolff Decl., Ex. 3.) Given his frequent communications with his son, as  
 9 evidenced by their extraction reports and cell phone bills, and their retention of the  
 10 same firm, it is more than probable Charlie shared his father’s understanding of the  
 11 allegations. But if Frank Ferrara’s admission under oath to discussing this lawsuit  
 12 before April 7, 2016 is insufficient, certainly the scores of communications between  
 13 Alan Johnston (who clearly knew about this lawsuit the day it was filed), Sang Lee,  
 14 and both Ferraras should suffice. (Wolff Decl. Supp. Pltfs.’ Mot. Sanctions, Dock.  
 15 No. 470, ¶¶ 3-6; Wolff Decl., Ex. 8.) Thus, at the latest, Charlie and Frank Ferrara  
 16 had a duty to preserve evidence by April 7, 2016.

17 **B. The Ferrara Defendants Failed To Comply With The Federal**  
 18 **Rules By Intentionally Destroying Relevant Evidence.**

19 After being caught, they now admit that “[t]here is no question that [their]  
 20 initial [discovery responses] and initial meet and confer efforts did not meet the  
 21 Court’s standards or expectations,” and acknowledge certain evidence is now lost,  
 22 yet the Ferrara Defendants contend the discovery issues “are essentially resolved.”  
 23

---

24 <sup>1</sup> The Ferrara Defendants note that “Charlie Ferrara was not asked whether or when  
 25 he became aware of the news stories about Plaintiffs’ lawsuit at the time of his  
 26 deposition.” (Ferrara Opp’n at fn. 14, p. 16.) Of course, Charlie Ferrara had not  
 27 produced a single document prior to his July 7, 2017 deposition, and Plaintiffs did  
 28 not (and could not have) known at that time that he destroyed evidence such that his  
 first knowledge of this lawsuit would become relevant.

(Ferrara Opp’n at 2:15-18.) This is not the case. Critical relevant evidence is missing and the adequacy of recent productions remains in dispute.<sup>2</sup> Plaintiffs have been and will continue to be prejudiced by these discovery violations and “neither this admission nor the remedial efforts have cured the deficiency.” *See Perez v. Shippers Transp. Express, Inc.*, 2014 WL 12591809, \*8 (C.D. Cal. July 8, 2014).

As an initial matter, the Ferrara Defendants’ belated efforts to comply with their discovery obligations does not excuse their prior misconduct, particularly where critical evidence remains missing. *Perez*, 2014 WL 12591809 at \*8 (“the Ninth Circuit has on numerous occasions rejected the defense of ‘belated compliance,’” noting “for the same reasons, [parties] cannot discharge [their] duty to preserve documents by attempting to recover destroyed documents.”).

Moreover, the Ferrara Defendants’ recent “diligent efforts” to comply with discovery are the result of court intervention, not voluntary compliance. Before this court’s involvement in July, the Ferrara Defendants had stalled, obstructed, and otherwise thwarted discovery in this case. They failed to preserve *any* evidence until July 2017, despite being served approximately one year before and receiving document requests in November 2016. (*See* Wolff Decl. Supp. Pltfs.’ Mot. for Sanctions, Dock. No. 470, ¶¶ 13-17.) The Ferrara Defendants also lied about the existence of responsive information in discovery responses, and strung Plaintiffs along for seven months, claiming they were “working” to obtain the information but making no such efforts. In the meantime, evidence was lost as their cell phone

---

<sup>2</sup> The Ferrara Defendants improperly redacted recent productions based on claims of privilege. (Ferrara Opp’n at 8:16-20.) These redactions are improper because: (1) neither Ferrara objected to Plaintiffs’ document requests on the basis of privilege; (2) counsel for the Ferrara Defendants *twice* represented to this Court that “we did not redact any privileged information”; and (3) the Ferraras’ privilege log fails to include details that would enable Plaintiffs to assess their claims of privilege, were they not already waived. (*See* Wolff Decl., Ex. 7.)

1 carrier retains only the most recent 18 months' worth of information. (*See id.*)

2 Although the Ferrara Defendants question the relevance of the missing  
3 evidence<sup>3</sup>, they do not dispute that it is unrecoverable. Charlie Ferrara cannot  
4 produce any data from his cell phone prior to mid-August 2016 (including data from  
5 the critical January and February 2016 timeframe). Nor are his cell phone bills  
6 helpful in this regard since his "[b]illing records from January 11, 2016 through  
7 February 24, 2016 have been produced, *but omit a list of text messages sent or*  
8 *received.*" (Ferrara Opp'n at 9:13-15.) And although Frank Ferrara was able to  
9 belatedly produce his cell phone bills, he was unable to recover 9 text messages he  
10 exchanged with a co-Defendant after he knew about this lawsuit.

11 These communications are critical to the allegations in this case, where  
12 Plaintiffs have alleged the Defendants conspire to exclude outsiders through a  
13 variety of means, including communication via text. (Compl., Dock. No. 1, ¶ 47.)  
14 The limited cell phone records that have been produced by other Defendants  
15 confirm the Defendants' communication and coordination via cell phone. For  
16 instance, a recent production by co-Defendant Papayans establishes that he  
17 conspired with Sang Lee and others to attack Plaintiff Spencer on January 29, 2017.  
18 (*See Wolff Decl., Ex. 2.*) Certainly, the Ferrara Defendants' communications with  
19 Sang Lee are relevant to Plaintiffs' allegations. Moreover, "the 'spoliation of  
20 evidence raises a presumption that the destroyed evidence goes to the merits of the  
21 case[ ] and ... that such evidence was adverse to the party that destroyed it.'" *Oppenheimer v. City of La Habra*, 2017 WL 187596, \*13 (C.D. Cal. Feb. 17, 2017)  
22 (noting that the destruction of text messages was attributable to the defendants'

---

23  
24  
25 <sup>3</sup> "When evidence is destroyed in bad faith (*i.e.*, intentionally or willfully), that fact  
26 alone is sufficient to demonstrate relevance." *Reinsdorf v. Skechers U.S.A., Inc.*,  
27 296 F.R.D. 604, 627 (C.D. Cal. 2013) (quoting *Zubulake v. UBS Warburg LLC*, 220  
28 F.R.D. 212, 220 (S.D.N.Y.2003)).

1 “shared intent to keep incriminating facts out of evidence”) (quoting *Apple v.*  
 2 *Samsung*, 888 F. Supp. 2d 976, 993 (N.D. Cal. Aug. 21, 2012)).

3 **C. Plaintiffs Are Prejudiced By The Ferraras’ Spoliation.**

4 By failing to produce some evidence and severely delaying the production of  
 5 other evidence, the Ferrara Defendants have deprived Plaintiffs of their ability to  
 6 appropriately oppose summary judgment – as to all defendants – and prepare for  
 7 trial. Indeed, “the existence or nonexistence of certain facts can shape a party’s  
 8 entire approach to preparing for trial. It is largely a recognition of how much  
 9 preparation a trial entails that leads courts to set discovery cutoff dates far in  
 10 advance of trial.” *Perez*, 2017 WL 12591809 at \*7. Here, the Ferrara Defendants’  
 11 document productions occurred, in large part, after filing for summary judgment and  
 12 after the discovery cutoff. Their most recent production occurred on September 21,  
 13 2017, less than three months before trial, whereas the plaintiff in *Perez* was  
 14 prejudiced by a production six months before trial. *Id.* Although Plaintiffs have  
 15 been afforded the opportunity to supplement their oppositions to Defendants’  
 16 summary judgment motions, this takes time away from necessary trial preparation.  
 17 Moreover, Plaintiffs cannot use the evidence destroyed by Defendants.

18 **III. CONCLUSION**

19 The Ferrara Defendants’ pattern of obstructive conduct, including their failure  
 20 to preserve evidence, denial of the existence of responsive information, and  
 21 destruction of relevant evidence, has severely prejudiced Plaintiffs. This extreme  
 22 conduct warrants an extreme remedy in the form of terminating sanctions, or in the  
 23 alternative, denial of summary judgment and an adverse inference jury instruction.

24 DATED: October 9, 2017

HANSON BRIDGETT LLP

25 By: /s/ Samantha Wolff

26 KURT A. FRANKLIN  
 27 SAMANTHA D. WOLFF  
 28 Attorneys for Plaintiffs